

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

	X	
B & R SUPERMARKET, INC., d/b/a	:	Case No. 1:17-cv-02738-MKB-JO
MILAM'S MARKET, a Florida corporation,	:	
et al., Individually and on Behalf of All	:	<u>CLASS ACTION</u>
Others Similarly Situated,	:	
	:	
Plaintiff,	:	JOINT STATUS REPORT
	:	
v.	:	Conference Date: December 13, 2018
	:	
VISA, INC., a Delaware corporation, et al.,	:	
	:	
Defendants.	X	

Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") and defendants Mastercard International Inc. ("Mastercard"), Discover Financial Services ("Discover"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa"), and American Express Company ("AmEx") (collectively, "Defendants") respectfully submit this joint report in advance of the status conference scheduled for December 13, 2018. The parties agree that there are no issues ripe for discussion with the Court and respectfully request to cancel the December 13 status conference.

I. PENDING MOTIONS

Plaintiffs' Renewed Motion for Class Certification. Judge Brodie entered an order denying Plaintiffs' motion for class certification without prejudice. (Dkt. No. 644.) Plaintiffs served their renewed motion for class certification ("renewed motion") on July 16, 2018. Pursuant to the Court's August 21, 2018 amended scheduling order, Defendants' response was due October 19, 2018, and Plaintiffs' reply was due November 19, 2018. (*See* Dkt. No. 660.) After the service of Plaintiffs' renewed motion, AmEx informed Plaintiffs of an inadvertent error that resulted in documents being omitted from AmEx's document review pool as explained in

AmEx's October 16, 2018 letter to the Court (Dkt. No. 671). On October 17, 2018, the Court entered an order terminating the renewed motion without prejudice to reinstatement and directing the parties to submit a proposed schedule when the parties agree that they are prepared to resume briefing. (*See* Dkt. No. 672.)

AmEx has now reviewed those additional documents for responsiveness and produced all responsive, non-privileged documents on a rolling basis between October 26, 2018 and November 10, 2018. On November 15, 2018, AmEx produced its privilege logs and confirmed that production was complete. The parties met and conferred on December 4, 2018 and anticipate completing their review of AmEx's additional production on or before December 21, 2018. After the review is complete, Plaintiffs will assess whether the newly produced documents require any additional discovery, expert work or amendments to Plaintiffs' renewed motion and will then meet and confer with the other parties.

Discover's Motion to Compel Arbitration. In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018 (Dkt. No. 644), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to wait until Plaintiffs have filed a renewed motion for class certification and the Court has decided that motion before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

II. CASE SCHEDULE

Amended Case Schedule. On August 20, 2018, the parties jointly requested that the current case schedule be amended to extend the briefing on Plaintiffs' renewed motion for class certification and the deadline for Plaintiffs' merits expert reports. (Dkt. No. 659.) The Court granted the parties' request on August 21, 2018. (Dkt. No. 660.) As described above, Plaintiffs' renewed motion for class certification has been terminated without prejudice to reinstatement.

(Dkt. No. 672.) The parties anticipate requesting an amended case schedule after the document review is complete.

III. STATUS OF DISCOVERY

Defendants' Production of Transaction Data. In early 2018, Plaintiffs requested that Defendants provide transaction data for the time period through and including September 30, 2017. After a lengthy meet and confer process, Visa, Mastercard, and Discover largely agreed to produce specific data as requested and AmEx agreed to supplement its prior production of the transaction data for a sample of merchants and produce a series of monthly reports that reflect FLS chargebacks in an aggregate form. Mastercard and Discover completed their productions prior to the filing of the renewed motion for class certification. Visa and AmEx completed their productions later that month. Plaintiffs intend to meet and confer further with AmEx regarding the production of further transaction data.

Additional Fact Discovery. As set forth in AmEx's recent letter (Dkt. No. 671), upon the completion of the document review by all parties, the parties have agreed to meet and confer as to whether and what additional fact discovery may be necessary.

Third-Party Discovery. During the fact discovery period, Plaintiffs issued subpoenas to numerous third parties, including those that Plaintiffs believe have served as acquirers and/or processors with respect to merchant transactions identified in Defendants' production of transaction data. To date, Plaintiffs have received all anticipated third party data productions.

Respectfully submitted this 6th day of December, 2018, by:

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

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